

Nov 19, 2018

SEAN F. MCAVOY, CLERK

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

UNITED STATES OF AMERICA,

Plaintiff,

v.

GREGORY D. JEFFREYS (1),

Defendant

NO: 2:13-CR-12-RMP-1

ORDER DENYING DEFENDANT'S  
MOTION PURSUANT TO 28 U.S.C. §  
2255 OR 18 U.S.C. § 3582(c)(2)

BEFORE THE COURT is Defendant Gregory Jeffreys' petition, pursuant to 28 U.S.C. § 2255, to vacate, set aside, or correct his sentence. ECF No. 618; *see also* ECF No. 619 (supplement). The Government filed a response opposing the relief that Defendant seeks. ECF No. 622. Mr. Jeffreys completed the briefing by filing a reply. ECF No. 623. Having reviewed the parties' filings, the remaining record, and the relevant law, the Court is fully informed.

**BACKGROUND**

On November 22, 2013, Defendant entered a plea of guilty to the following

1 counts of the information superseding indictment in this matter: wire fraud  
2 affecting a financial institution in violation of 18 U.S.C. § 1342 (Count 1); bank  
3 fraud in violation of 18 U.S.C. § 1344 (Count 2); wire fraud in violation of 18  
4 U.S.C. § 1343 (Count 3) and conspiracy to commit an offense against the United  
5 States in violation of 18 U.S.C. §§ 371 and 401(2) (Count 4). ECF No. 408.  
6 Defendant pleaded guilty pursuant to a Federal Rule of Criminal Procedure  
7 11(c)(1)(C) plea agreement. ECF No. 403. As part of the plea agreement, the  
8 parties agreed that “[p]ursuant to U.S.S.G. §§ 2B1.1(b)(1) and 1B1.3, the relevant  
9 amount of actual, probable, or intended loss resulting from the offenses committed,  
10 and described in the Superseding Information, is more than \$7,000,000, but less  
11 than \$20,000,000, resulting in a 20-level increase and an offense level of 27.” ECF  
12 No. 403 at 14. In light of Mr. Jeffreys’ criminal history category of I and total  
13 offense level of 28, the United States Sentencing Guidelines (“USSG”) in effect at  
14 the time of sentencing specified a sentencing range of 78 to 97 months in custody  
15 for Counts 1, 2, and 3.

16 On June 5, 2014, the Court sentenced Defendant to 96 months incarceration,  
17 as sought by the parties pursuant to the plea agreement, on Counts 1, 2, and 3 and  
18 seven months incarceration on Count 4, to run concurrently. ECF No. 566; *see*  
19 *also* ECF Nos. 501, 535, and 536 (Sentencing Memoranda).

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To be timely, a motion challenging a conviction or sentence under 28 U.S.C. § 2255 is subject to a one-year limitations period that runs from the latest of:

- (1) the date on which the judgment of conviction becomes final;
- (2) the date on which the impediment to making a motion created by governmental action in violation of the Constitution or laws of the United States is removed, if the movant was prevented from making a motion by such governmental action;
- (3) the date on which the right asserted was initially recognized by the Supreme Court, if that right has been newly recognized by the Supreme Court and made retroactively applicable to cases on collateral review; or
- (4) the date on which the facts supporting the claim or claims presented could have been discovered through the exercise of due diligence.

ORDER DENYING DEFENDANT’S MOTION PURSUANT TO 28 U.S.C. §  
2255 OR 18 U.S.C. § 3582(c)(2) ~ 3

1 In his reply, Mr. Jeffreys asserts that he was trying to make a motion  
2 pursuant to 18 U.S.C. § 3582(c)(2) when the Court interpreted his letter as an  
3 unsigned request for relief under 28 U.S.C. § 2255.

4 As a general rule, a district court “may not modify a term of  
5 imprisonment once it has been imposed.” 18 U.S.C. § 3582(c). However,  
6 under 18 U.S.C. § 3582(c)(2):

7 [I]n the case of a defendant who has been sentenced to a term of  
8 imprisonment based on a sentencing range that has subsequently been  
9 lowered by the Sentencing Commission pursuant to 28 U.S.C. 994(o),  
10 upon motion of the defendant or the Director of the Bureau of Prisons,  
11 or on its own motion, the court may reduce the term of imprisonment,  
12 after considering the factors set forth in [18 U.S.C. § 3553(a)] to the  
13 extent that they are applicable, if such a reduction is consistent with  
14 applicable policy statements issued by the Sentencing Commission.

15 A court undertakes a two-step inquiry in determining whether a  
16 sentence reduction is appropriate under 18 U.S.C. § 3582(c)(2). *United*  
17 *States v. Dunn*, 728 F.3d 1151, 1155 (9th Cir. 2013). At step one, the Court  
18 asks whether Defendant is eligible for a sentence modification under the  
19 Sentencing Commission’s policy statement in USSG § 1B1.10. *See Dillon*  
20 *v. United States*, 560 U.S. 817, 817–18 (2010). Section 1B1.10(d) lists the  
USSG amendments that are eligible to retroactively reduce sentences under  
18 U.S.C. § 3582(c)(2). If the answer at step one is no, the Court’s inquiry  
is over. If the answer is yes, the Court proceeds to step two and considers  
any applicable 18 U.S.C. § 3553(a) factors to determine, in the Court’s

1 discretion, whether the reduction is warranted in whole or in part given the  
2 particular circumstances of the case. *Dunn*, 728 F.3d at 1155.

### 3 **DISCUSSION**

4 In Defendant's initial motion, he argued that he is entitled to relief based on  
5 a right recognized by an unspecified United States Supreme Court opinion issued  
6 in June 2018. ECF No. 618 (referring to Defendant's letter filed at ECF No. 616).

7 The Court construed Mr. Jeffreys' initial, unsigned filing as a motion  
8 pursuant to 28 U.S.C. § 2255 and provided Mr. Jeffreys with the form motion to  
9 complete, sign, and file, if he wanted to pursue that relief. However, to the extent  
10 that Mr. Jeffreys seeks relief under § 2255, the motion cannot succeed. Mr.  
11 Jeffreys does not establish that the one-year limitation period began to run on a  
12 later date or that an exception applied.

13 The Court, therefore, construes Mr. Jeffreys' motion as one for a sentence  
14 reduction under 18 U.S.C. § 3582, as Mr. Jeffreys argues that he intended to seek  
15 relief under that provision rather than under § 2255. *See Hamilton v. United*  
16 *States*, 67 F.3d 761 (9th Cir. 1995) (liberally construing an ambiguous petition for  
17 sentencing relief from a *pro se* prisoner). However, Mr. Jeffreys does not qualify  
18 for relief under 18 U.S.C. § 3582(c)(2) either.

19 Amendment 791 to § 2B1.1 of the USSG made changes to the loss tables in  
20 that section. At the time of Mr. Jeffreys' sentencing in 2014, his guideline range

1 for Counts 1 through 3 was 78 to 97 months in custody pursuant to the offense  
2 level enhancement provided in § 2B1.1. After Amendment 791 took effect on  
3 November 1, 2015, the amount of loss to warrant a 20-level increase rose to  
4 \$9,500,000 or more. Even though the plea agreement between the parties  
5 stipulated to a loss amount of “more than \$7,000,000, but less than \$20,000,000,”  
6 ECF No. 403 at 14, Mr. Jeffreys argues that his loss amount was \$9,300,000. After  
7 Amendment 791, a loss amount of more than \$3,500,000, but less than \$9,500,000  
8 would result in an 18-level increase to the offense level, rather than the 20-level  
9 increase that Mr. Jeffreys received. The Government argues that the 2015  
10 amendment to the loss tables in § 2B1.1 does not apply retroactively.

11 Amendment 791 is not listed in USSG § 1B1.10(d). Therefore, the USSG  
12 does not authorize a sentencing reduction for a sentence imposed before November  
13 1, 2015, the effective date of the amendment. *See Dillon*, 560 U.S. at 817–18.  
14 Accordingly, the Court does not find it appropriate to proceed to step two of the  
15 inquiry.

16 Mr. Jeffreys also maintains that a “June 4, 2018” opinion by the United  
17 States Supreme Court is relevant to his request for a reduction in sentence in that it  
18 makes pleas under Fed. R. Crim. P. 11(c)(1)(C) “eligible for a 2-level reduction  
19 under 18 USC 3582.” ECF No. 616 at 1 (June 4, 2018 letter from Mr. Jeffreys  
20 referenced in Mr. Jeffreys’ motion). The Government presumes, and the Court

1 agrees, that Mr. Jeffreys refers to the Supreme Court's decision in *Hughes v.*  
2 *United States*, 138 S. Ct. 1765 (2018). *See* ECF No. 622 at 4. In *Hughes*, the  
3 Supreme Court held that a defendant's plea agreement pursuant to Fed. R. Crim. P.  
4 11(c)(1)(C) is "based on" the defendant's USSG range "so long as that range was  
5 part of the framework the district court relied on in imposing the sentence or  
6 accepting the agreement." 138 S. Ct. at 1775. Since the amendment at issue for  
7 Mr. Jeffreys' motion is not retroactive to when he was sentenced, *Hughes* has no  
8 effect on Mr. Jeffreys' eligibility for a sentence reduction. Accordingly, the Court  
9 denies Mr. Jeffreys' request to reduce his sentence by decreasing his offense level,  
10 pursuant to Amendment 791, by two.

11 Finally, the Court finds "that jurists of reason would [not] find it debatable"  
12 whether the Court's ruling is correct, and, therefore, declines to issue a certificate  
13 of appealability under 28 U.S.C. § 1915(a)(3). *See Slack v. McDaniel*, 529 U.S.  
14 473, 478 (9th Cir. 2000).

15 Accordingly, **IT IS HEREBY ORDERED:**

16 1. Defendant's Motion under 28 U.S.C. § 2255 to Vacate, Set Aside, or  
17 Correct Sentence, **ECF No. 618**, is **DENIED**.

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2. The Court certifies, pursuant to 28 U.S.C. § 1915(a)(3), that a certificate of appealability will not issue.

The District Court Clerk is directed to enter this Order and provide copies to Defendant Gregory Jeffreys and counsel.

DATED November 19, 2018.

*s/ Rosanna Malouf Peterson*  
 ROSANNA MALOUF PETERSON  
 United States District Court Judge